

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DISTRICT

JEFFERY L. SIMONS and
AUDREY SIMONS

PLAINTIFFS

versus

No. 1:09-cv-172HSO-RHW

STATE FARM FIRE & CASUALTY COMPANY

DEFENDANT

PLAINTIFFS' MOTION FOR LEAVE TO FILE SUPPLEMENTAL COMPLAINT

COME NOW the Plaintiffs JEFFERY L. SIMONS and AUDREY SIMONS and move this Court for leave to file a supplemental complaint joining additional parties, with the Plaintiffs showing as follows in support of this Motion:

1. The Plaintiffs have pled claims which allege that the Defendant STATE FARM FIRE & CASUALTY COMPANY failed to properly adjust their claim for wind damage and lost rents resulting from damage to their insured properties, as referenced in Paragraphs 8, 9, 10, 11, 14, 15, 16 and 18 of the Plaintiff's Second Amended Complaint filed in this Cause on September 1, 2009.

2. Subsequent to the filing of the Second Amended Complaint, the Defendant STATE FARM FIRE & CASUALTY COMPANY produced documentation showing that adjusters, engineers and associated persons it retained to conduct evaluations and adjustments of the wind damage at the Plaintiffs' insured properties, to-wit, Silbey Group, Ltd., William V. Gwin, Robert J. Illlo and Pilot Catastrophe Services, Inc., acted in gross negligence, malice, or reckless disregard for the rights of the Plaintiffs in the adjustment of these losses, with these documents and the underlying facts of the adjustment of the Plaintiffs'

claims supporting the filing of supplemental claims and the joinder of Silbey Group, Ltd., William V. Gwin, Robert J. Illio and Pilot Catastrophe Services, Inc. as additional parties in this Cause.

3. Under Mississippi law, an insurance adjuster, agent, or other similar entity may be held independently liable for its work on a claim if its acts amount to gross negligence, malice, or reckless disregard for the rights of the insured. See, *Gallagher Bassett Service, Inc. v. Jeffcoat*, 887 So. 2d 777, 783 (Miss. 2004); *Bass v. California Life Insurance Co.*, 581 So. 2d 1087, 1090 (Miss. 1991).

4. In view of the foregoing facts and matters, the Plaintiffs assert that these additional parties have incurred independent liability in the adjustment of the Plaintiffs' claims, for wind damage, and the Plaintiffs hereby move this Court for leave to file the attached Supplemental Complaint.

5. The Plaintiffs would show that after they received the Defendant's disclosures and discovered this information during October 2009, they immediately requested that the Defendant STATE FARM FIRE & CASUALTY COMPANY consent to the filing of this Supplemental Complaint, and in response to the Plaintiffs' request, the Defendant asked that the deadline for the joinder of additional parties be extended for one (1) month in order for the Defendant to consider the Plaintiffs' settlement offer.

6. In accordance with the joint motion of the Parties, this Court extended the deadline for the amendment of pleadings or the joinder of additional parties until October 23rd. However, the Defendant has failed to engage in any

settlement discussions or respond to the Plaintiffs' settlement offer during the past month. In view of this fact, it is necessary for the Plaintiffs to proceed with the joinder of these additional parties and the filing of the Supplemental Complaint.

7. The Plaintiffs would additionally show that they have inquired of opposing counsel on several occasions over the past week as to whether the Defendant STATE FARM FIRE & CASUALTY COMPANY would consent to the filing of the attached Supplemental Complaint, but the Defendant has failed to advise the Plaintiffs of its position on the joinder of these additional parties. Accordingly, the Plaintiffs cannot represent to the Court the Defendant's position concerning the Plaintiffs' Motion.

WHEREFORE, PREMISES CONSIDERED, the Plaintiffs move this Court for leave to file the attached Supplemental Complaint.

This the 19th day of November, 2009.

/s/ Blewett William Thomas
BLEWETT W. THOMAS

Blewett William Thomas
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CERTIFICATE OF SERVICE

I, BLEWETT W. THOMAS, do hereby certify that I have electronically served this day true and correct copies of the foregoing pleadings to the following counsel of record:

Sherrie L. Moore, Esq.
Allen, Cobb, Hood & Atkinson, P.A.
PO Drawer 4108
Gulfport, MS 39502-4108

This the 19th day of November, 2009.

/s/ Blewett William Thomas
BLEWETT W. THOMAS